TORTS—CIVIL RIGHTS—RIGHTS OF PRIVACY.—BINNS V. AMERICAN VITAGRAPH CO., 132 N. Y., SUPP., 237.—*Held,* that where one is greatly disturbed in his mind and his feelings are injured by the unlawful use of his name and picture he may recover exemplary damages. McLaughlin, J., *dissenting.*

The common law regards the person as inviolate and recognizes one's right to be let alone. *Cooley on Torts,* p. 29; *Harvard Law Review,* Dec. 15, 1890. The mere fact that the cause of an injury is novel does not leave it without a remedy.*Kiyek v. Goldman,* 150 N. Y., 176. There is authority in support of the principle case, *Marks v. Jaffa,* 6 N. Y. Misc., 290, and the English courts are in accord with the doctrine. *Tuck v. Priester,* 192 B. D., 639 (1887); *Prince Albert v. Strang,* 1 Masn., 825; *Pollard v. Photograph Co.,* 40 Ch. Div., 345 (1888). By the great weight of opinion relatives cannot collect damages for injuries to their feelings through the publishing of pictures of their dead. *Corliss v. Walker,* 57 Fed., 434; *Atkinson v. Doherty,* 121 Mich., 372; *Schuyler v. Curtis,* 147 N. Y., 434.

WILLS—NUNCUPATIVE WILL.—MITCHELL V. STANTON, 139 S. W., 1034 (TEX.).—*Held,* a nuncupative will does not pass title to realty.

A nuncupative will is one that is not in writing ,and exists only when the testator declares his will orally before a sufficient number of witnesses, while he is in his last sickness. *Estate of Miller,* 47 Wash., 253; *Wiley's Estate,* 187 Pa., 82. The doctrine of nuncupative will is derived from the civil law and was incorporated into the common law, before the statute of wills. *Prince v. Hazleton,* 20 Johns., 519. It was a common mode of devising property among seamen, sailors, and soldiers in service. These devises and bequests were usually of personalty, or realty of small amounts. *Lewis v. Aylott,* 45 Texas, 190. The words spoken to constitute a nuncupative will must manifest an intent to make a will, and must be spoken *in extremis. Sykes v. Sykes,* 2 Stew., 364; *Morgan v. Steves,* 78 Ill., 287. It is well established that personal property may be bequeathed by a nuncupative will. *Godfrey v. Smith,* 73 Neb., 756. In some states, under statutory provisions realty may be devised by a nuncupative will. *Gillis v. Willer,* 10 Ohio, 463. The weight of authority however is that realty cannot be devised by a nuncupative will. *Palmer v. Palmer,* 2 Dana, 390; *Pierce v. Pierce,* 46 Ind., 86.

WILLS—WILL OF MARRIED WOMAN—CONSENT OF HUSBAND.—ERICKSON V. ROBERTSON, 133 N. W., 164 (MINN.).—*Held,* that written consent by the husband to the devise by the wife of her real property is valid and effectual without consideration, though given in furtherance of a void written agreement between husband and wife, by which each, in terms, released all interest in the other's real property; the wife having performed her part of the agreement.

At common law the will of a married woman devising her real property was void even though made with her husband's consent. *2Bla. Com.,*

497, 498; *Fitch v. Brainerd,* 2 Day (Conn.), 163; *Osgood v. Breed,* 12 Mass., 525; *Marston v. Norton,* 5 N. H., 205. Her will of personal property was only valid if the husband consented. *George v. Bussing,* 54 Ky., 558; *Lee v. Bennett,* 31 Mass., 119; *Emery v. Neighbour,* 7 N. J. L., 142. Such consent might be given by parol or might be implied, consideration being unnecessary. *Reed v. Blaisdell,* 16 N. H., 194; *Webb v. Jones,* 36 N. J. Eq., 163; *Fisher v. Kimball,* 17 Vt., 323. Under the present enabling statutes of most of the states a wife may devise all her property, real and personal, if the husband waive his rights by his consent. *Smith v. Sweet,* 55 Mass., 470; *Beals v. Storm,* 20 N. J. Eq., 372; *Kurtz v. Saylor,* 20 Pa., 205. Generally such consent, unless given after her death, may be revoked up to the time of the probate of the will. *Redfield on Wills,* Par. 4; *Newlin v. Freeman,* 23 N. C., 514; *Van Winkle v. Schoonmaker,* 15 N. J. Eq., 384. *Wagner's Estate,* 2 Ashm. (Pa.), 448, allows revocation of consent given after her death, but this is no longer the rule. *Schouler, Husband and Wife,* Sec. 458, 459; *Maas v. Sheffield,* 1 Rob. Ecc., 364. Now contracts to make a will are generally valid. *Stellmacher v. Bruder,* 89 Minn., 507; *Gupton v. Gupton,* 47 Mo., 37; *Van Duyne v. Vreeland,* 12 N. J. Eq., 142. And mutual agreements to make wills have been held to be so far performed that one party cannot withdraw only when the other party has died after making his will according to agreement. *Allen v. Bromberg,* 147 Ala., 317; *Frazier v. Patterson,* 243 Ill., 80; *Bower v. Daniel,* 198 Mo., 289; *Turnipseed v. Sirrine,* 57 S. C., 559. But in some jurisdictions following the common law rule, contracts between husband and wife concerning realty are absolutely void. *Gebb v. Rose,* 40 Md., 387; *Jenne v. Marble,* 37 Mich., 319; *Laird v. Vila,* 93 Minn., 45. Therefore the decision of the principal case, while undoubtedly correct, would seem to turn, not on any part performance by the wife of a void contract, but on the fact that the husband did not revoke his consent in time. 1 *Jarm. on Wills,* (6 Am. Ed. by Bigelow), 51-54; *Cutter v. Butler,* 25 N. H., 343; *In re Ormond's Estate,* 161 Pa., 543.